

PT 95-10
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

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THE PEORIA WOMEN'S CLUB      )   Docket No.(s)  93-72-123  
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      Applicant              )   PI No.(s) 18-09-226-001-C16  
                             )   (Peoria County)  
                             )  
                             )  
      v.                     )  
                             )  
                             )  
THE DEPARTMENT OF REVENUE    )  
OF THE STATE OF ILLINOIS    )   George H. Nafziger  
                             )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES None

SYNOPSIS A hearing was held in this matter on September 21, 1994, to determine whether or not the parcel here in issue and the building thereon, qualified for exemption from real estate tax for the 1993 assessment year.

Is Applicant a school or a charitable organization? Did Applicant own the parcel here in issue and the building thereon, during all of the 1993 assessment year? Was the parcel here in issue and the building thereon, used for school or charitable purposes during all of the 1993 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that Applicant is not a school or a charitable organization. It is also determined that while Applicant owned the parcel here in issue and the building thereon, during all of the 1993 assessment year, it did not use the parcel here in issue and the building thereon, for either school or charitable purposes during that year.

FINDINGS OF FACT The Department's position in this matter, namely

that Applicant failed to establish that this parcel and the building thereon, was owned by a school or a charitable organization during the 1993 assessment year, and also that it failed to establish that said parcel and building were used for school or charitable purposes during said year, was established by the admission in evidence of Department's Exhibits 1 through 6B.

The Peoria County Board of Review, on December 3, 1993, forwarded an Application for Property Tax Exemption To Board of Review for the parcel here in issue and the building thereon, for the 1993 assessment year, to the Illinois Department of Revenue (Department's Exhibit 2). On June 30, 1994, the Department of Revenue notified Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Department's Exhibit 3). Mrs. Ruth Swardenski, on behalf of Applicant, by a letter dated July 18, 1994, requested a formal hearing in this matter (Department's Exhibit 4). The hearing held September 21, 1994, was held pursuant to that request.

At the hearing, Mrs. Darlene Hunt, president of Applicant, and Mrs. Ruth Swardenski, grant's chairman of Applicant, were present, and testified on behalf of Applicant.

Applicant's Articles of Incorporation provide that Applicant was organized for the following purposes:

"2. The object for which it formed is mutual sympathy and counsel and united effort toward the higher civilization of humanity-not for pecuniary gain."

Applicant acquired the parcel here in issue on February 2, 1892. Said parcel is improved with a two-story building. The first floor of said building contains an office, restrooms, cloakroom, kitchen, large dining room, and a drawing room. The second floor contains a classroom and an auditorium. During 1993, the auditorium was not usable because of fire damage. Applicant uses the building here in issue from September through

May on Mondays and Thursdays. A luncheon is served every Thursday in the dining room. The kitchen only has facilities for storing and warming food, since all the luncheons are catered. The price of the luncheons, during 1993, was \$5.25. No evidence was offered that the price of the luncheon was ever waived, or reduced, in cases of need. On Thursdays, there are classes beginning at 11:00 A.M.. This is followed by the luncheon and a social hour, or a speaker, on a subject of interest. Every Monday, there is chorus practice from 9:30 A.M. till noon. On the second Monday of each month, there is a program or a social activity, and then a tea. The Applicant's Board of Directors meets in the morning on the third Monday of each month. The annual dues to belong to Applicant during 1993, were \$50.00. During the 1993 assessment year, the bylaws of Applicant, concerning Courtesy Members, read as follows:

"Dues shall be waived for persons who, because of their financial difficulty or condition, do not have the financial ability to pay dues and they shall be designated as Courtesy Members. They are entitled to all rights and privileges of membership."

During the period January 1, 1993, through May 17, 1993, Applicant's yearbook listed six Courtesy Members. Mrs. Hunt testified that these six Courtesy Members were all ladies who were no longer physically able to attend meetings. No evidence was offered that if they were able to attend a luncheon, the luncheon fee would have been waived, or reduced, for them. During the period September 27, 1993, through December 31, 1993, Mrs. Hunt testified that Applicant had no Courtesy Members. Mrs. Hunt also testified that during 1993, Applicant had approximately 150 members, and the attendance at the Thursday luncheon meetings ranged from 35 to 45. Applicant's statements of income and expenses, which included 1993, showed that Applicant made no contributions to charity during that year. Applicant's classes for members during the meetings included music, language, literature, travelogues, public affairs, home, and personality.

Applicant's Exhibit 2 is a letter from the Internal Revenue Service,

stating that Applicant is exempt from income tax, pursuant to Section 101(6) of the Internal Revenue Code, and is an educational organization.

1. Based on the foregoing, I find that Applicant was organized for social and cultural purposes.

2. Applicant, I find, owned the parcel here in issue and the building thereon, during the entire 1993 assessment year.

3. Applicant's primary sources of funds, I find, were dues, proceeds of special projects, building rentals, and only incidentally, contributions.

4. I also find that Applicant had no capital, capital stock, or shareholders, and did not profit from the enterprise during 1993.

5. I further find that the building on the parcel here in issue was used during 1993, primarily for social and cultural activities for the membership.

6. The benefits of Applicant's classes, programs, and social activities, were primarily enjoyed by Applicant's dues-paying members.

7. No evidence or testimony was offered that any of Applicant's classes or programs involved any physical activity on the part of the members.

8. Consequently, the primary use of the parcel here in issue during 1993, I find, was for social and cultural activities for Applicant's members, and not for charitable purposes.

9. I also find that Applicant's classes, programs, and cultural and social activities, did not constitute a systematic course of study during 1993, and that Applicant's activities during that year, did not reduce the burdens of government.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the

property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.1 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"...all property of schools...and including the real estate on which the schools are located...not leased by such schools or otherwise used with a view to profit...."

In *People ex rel. McCullough v. Deutsche Gemeinde*, 249 Ill. 132 (1911), at page 137, the Court stated as follows:

"A school within the meaning of the constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning which would make the place a school in the common acceptance of the word."

In *People ex rel. Brenza v. Turnverein Lincoln*, 8 Ill.2d 198(1956), citing a Minnesota case, the Court said:

"It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by the various publicly supported schools...which to such extent, thereby lessen the tax burden imposed upon our citizens as the result of our public educational system."

In *Coyne Electrical School v. Paschen*, 12 Ill.2d 387 (1957), the Court reaffirmed these two tests and the decisions in the previously cited cases. I have previously found that Applicant's one-hour, occasional classes, programs, and cultural activities do not constitute a systematic course of study as contemplated by the foregoing cases. I therefore conclude that Applicant was not a school during the 1993 assessment year, and did not use the parcel here in issue for school purposes during said year.

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of...not-for-profit organizations providing services or

facilities related to the goals of educational, social and physical development,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit,....All...not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development shall qualify for the exemption stated herein if upon making application for such exemption, the applicant provides affirmative evidence that such...not-for-profit organization is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code, or its successor, and the bylaws of the...not-for-profit organization, provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services, based upon the individual's ability to pay...." (Emphasis supplied)

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

It is also well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its Articles of Incorporation. *People v. Wyanett Light Co.*, 306 Ill. 377 (1922), and also, *Rotary International v. Paschen*, 14 Ill.2d 480 (1958). Applicant's Articles of Incorporation provide that it is organized for mutual sympathy and counsel, and united effort toward the higher civilization of humanity, and not for primarily charitable purposes.

Applicant alleged that it qualified for exemption during 1993, pursuant to the foregoing underlined portion of 35 ILCS 205/19.7 (1992 State Bar Edition). That language requires that an organization be exempt from federal income tax, pursuant to Section 501(c)(3) of the Internal

Revenue Code. Applicant is not exempt, pursuant to that Section. 35 ILCS 205/19.7 also requires that Applicant's bylaws provide for a waiver of fees for services, based upon an individual's ability to pay. Applicant's bylaw concerning Courtesy Members, I conclude, did waive dues in cases of need. However, the testimony was that the luncheon fee was not waived, or reduced, in cases of need. In addition, the testimony in this case was that, during the period January 1, 1993, through May 17, 1993, the six Courtesy Members were simply women who were not able to get to meetings, and not persons who could not afford the dues. In addition, the testimony was that, during the period September 27, 1993, through December 31, 1993, there were no Courtesy Members.

It should also be pointed out that the foregoing underlined language, which reads as follows:

"...and all property of not-for-profit organizations providing services or facilities related to the goals of educational social and physical development...."

was added to Section 205/19.7 by Public Act 85-312. In the State Senate, Senator Dawn Clark Netsch, on May 19, 1987, explained Senate Bill 203, which became Public Act 85-312, as follows:

"Thank you, Mr. President. The amendment addresses a problem that has arisen with respect to the property tax exemption provision. The Department of Revenue has been suggesting that some traditionally tax exempt nonprofit groups might be partially taxable on part of their property and the one particularly in issue is the YMCA."

Again, on May 21, 1987, Senator Netsch expressed the intent of the framers of this amendment as follows:

"Thank you, Mr. President. This is the amendment...or a revised version of the amendment that we started to discuss last...a few days ago and Senator Rigney raised a question which we have now resolved by revising it. It has to do with the property...the tax exemption of property, primarily of YMCA's and...because they have some activities that are in the athletic area, there were some disputes with the Department of Revenue. We have made it clear that...that kind of agency's property is tax exempt which I think it was expected all along." (Emphasis supplied)

I therefore conclude that it was the intent of the General Assembly when it

enacted Public Act 85-312, to exempt organizations which provide services and facilities for physical development and physical fitness, like the YMCA. The fact that Applicant provides one-hour programs, which are essentially talks about health or physical activity, does not meet the requirements intended by the legislature.

It should also be noted that the real estate tax exemption provision concerning veterans' organizations requiring that the property be used for charitable, patriotic, and civic purposes, was held by the Illinois Supreme Court in *North Shore Post No. 21 v. Korzen*, 38 Ill.2d 231 (1967), to require that for property to qualify for exemption, it must be used for all three enumerated purposes. See also *Coalition for Political Honesty v. State Board of Elections*, 65 Ill.2d 453 (1976), in which the Supreme Court determined that the language of Article XIX, Section 3, of the Illinois Constitution of 1970, which provides that Article IV of said Constitution, may be amended by constitutional initiative, and which requires that "[a]mendments shall be limited to structural and procedural subjects in Article IV", required that amendments by initiative to the legislative article affect both the structure and procedure of the legislature.

Consequently, I conclude that the provision of Section 205/19.7, cited hereinbefore, which exempts facilities related to the goals of educational, social, and physical development, requires that the facilities relate to all three goals for the facilities to qualify for exemption. Applicant's evidence, I conclude, establishes that the parcel here in issue and the building thereon, were used for activities primarily related to the goals of social and cultural development, and while those activities may have been somewhat educational, they most certainly did not meet the requirement concerning physical development as contemplated by the legislature.

Again, concerning 35 ILCS 205/19.7 (1992 State Bar Edition), in the

case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that Applicant failed to meet guidelines (1), (3), and (6), of the foregoing guidelines. Concerning guideline (1), the benefits derived were primarily enjoyed by Applicant's dues-paying members during the 1993 assessment year. Concerning guideline (3), Applicant's primary sources of funds during 1993, were membership dues, proceeds of special projects, building rentals, and only incidentally, charitable contributions. Finally, in regard to guideline (6), the primary use of this property, during 1993, was for social and cultural activities, and not for charitable purposes.

I therefore conclude that Applicant did not qualify as a charitable organization during the 1993 assessment year, within the purview of 35 ILCS 205/19.7, (1992 State Bar Edition).

I therefore recommend that Peoria County parcel No. 18-09-226-001-001-C16 and the building thereon, remain on the tax rolls for the 1993 assessment year, and be assessed to Applicant.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995

